Before the
Federal Communications Commission
Washington, DC

In re Applications of	)	MM Docket No. 93-107
	)	
DAVID A. RINGER	)	File No. BPH-911230MA
	)	
ASF BROADCASTING CORP.	)	File No. BPH-911230MB
	)	
WILBURN INDUSTRIES, INC.	)	File No. BPH-911230MC
	)	
SHELLEE F. DAVIS	)	File No. BPH-911231MA
	)	
OHIO RADIO ASSOCIATES	)	File No. BPH-911231MC

For Construction Permit for an
FM Station on Channel 280A in
Westerville, OH

To: The Review Board

REPLY OF SHELLEE F. DAVIS TO EXCEPTIONS

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January 5, 1994

SUMMARY

This is the Reply of Shellee F. Davis to the Exceptions of ORA Broadcasting Corp., Wilburn Industries, Inc., David A. Ringer, and Ohio Radio Associates. As seen herein, no financial issue should be designated in this proceeding. Davis has acquired a reasonable assurance of financing from the Huntington Bank which far exceeds her budgetary needs, and which clearly is not a mere "accommodation" from the financial institution. Moreover, Davis insofar as Davis has proposed to divest herself of her existing business, Davis is entitled to 100% integration credit -- none of the arguments presented by the other parties show that Davis can be prevented from either selling her existing business, Britt Business Systems, or if necessary, closing its doors and ceasing its operations, in order to effectuate her integration pledge in this proceeding. Finally, as seen herein, no site availability or misrepresentation issues are warranted, as well. The site designated in Davis' application remains available for her use, and she been truthful and honest in all her dealings with the Commission.

Davis is the superior applicant in this proceeding. Consequently, her application should be granted.

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REPLY TO EXCEPTIONS

Shellee F. Davis ("Davis"), by her attorney, pursuant to Section 1.277(c) of the Commission's Rules, hereby submits her Reply to the "Exceptions to Initial Decision" filed by Ohio Radio Associates ("ORA") ("ORA Exceptions"), "Exceptions to Initial Decision" filed by David A. Ringer ("Ringer") ("Ringer Exceptions"), "Exceptions and Brief" filed by Wilburn Industries, Inc. ("WII") ("WII Exceptions"), and "Exceptions of ASF Broadcasting Corporation" filed by ASF Broadcasting Corporation ("ASF") ("ASF Exceptions"). With respect thereto, the following is stated:

1. The Presiding Judge in this proceeding has determined that Davis is the comparatively superior applicant in this proceeding. Initial Decision of Administrative Law Judge Walter C. Miller, FCC 93D-22 (ALJ, Nov. 18, 1993) ("ID"). As seen in the "Consolidated Brief in Support of Initial Decision and Contingent Exceptions of Shellee F. Davis," this decision was entirely in accord with prevailing Commission precedent and policy. The other parties in this proceeding seek reversal of that ID, in each and every instance, through an incomplete recitation of applicable facts and law pertinent to each issue raised. For the reasons seen below, the parties' Exceptions should be denied, and the Initial Decision in this proceeding should be affirmed.[1]

No Financial Issue Against Davis is Warranted

2. ASF, ORA, and WII [2] argue that the Presiding Judge erred in denying WII's request for designation of a financial issue in this proceeding. ASF Exceptions at 3; ORA Exceptions at 7; WII Exceptions at 2. Those parties argue that Davis has obtained a mere "accommodation letter" to support her financial qualifications.

3. The parties misstate the facts. Davis filed her application in December 1991 after securing from Mid-Ohio Communications, former licensee of Station WBBY-FM, a commitment to lease to her its tower, its studio, and "some or all" of the equipment contained on a lengthy equipment list. Davis

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[1] The subsequent histories of all cases cited herein are contained in the Table of Authorities being filed herewith.

[2] As WII concedes, WII's Exceptions do not contain citations to testimony to which it refers. See WII Exceptions at 3 n.2. "[Section 1.277(a) does not permit] references to earlier filed pleadings which contain transcript references nor incorporation by reference of earlier filed pleadings which contains those references." Nuance Corp., 47 R.R.2d 1405 (Rev. Bd. 1980). Thus, much of WII's briefs must be disregarded as deficient.

estimated her first three month expenses, her additional construction costs (e.g., to purchase a directional antenna and auxiliary power generating equipment which is not being supplied by Mid-Ohio, miscellaneous other costs and equipment, debt service, and prosecuting and engineering costs), and the costs for additional equipment to construct the station which "may not" be made available Mid-Ohio, to be $289,496. Davis initially had available to her $300,000 in committed funds (consisting of a reasonable assurance of $250,000 from the Huntington Bank and $50,000 from herself) to accommodate even her worst-case budget. No reliance was placed on the Mid-Ohio Communications/Fry letter to support her financial qualifications estimate of $289,496. Cf. WII Reply Exceptions at 5 n.5. She obtained that assurance of the availability of funds from Huntington Bank after contacting Mr. Ralph Frasier, a Vice President of Huntington Bank, submitting a request, submitting financial information to him, and discussing the project with him.[3] Later, in order to ensure the availability of additional funds to operate beyond simply three months, Huntington Bank agreed to increase the amount of funds available to Davis to $350,000[4] which, when coupled with the funds she personally committed to contribute to the project, provides her with the availability of funding in the amount of $400,000, which is over $100,000 over even her worst-case budgetary needs. If (as is believed will be the case) most or all of the Mid-Ohio equipment can indeed still be leased from Mid-Ohio at the time the permit is awarded in this proceeding, assurances for funding which are over $200,000 in excess of her immediate budgetary needs have been secured. In either event, Davis has secured assurances of sufficient funds to construct and initially operate her station.

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[3] As WII notes, BancOhio initially also was approached about the loan by Davis, but contrary to WII's claims, there is no evidence that it has any more of an "established relationship" with her than Huntington Bank. Cf. ASF Exceptions at 8. There is no evidence that BancOhio was any more familiar with her overall finances than Huntington Bank, that she had a lengthier relationship with that institution, that she decided not to use that institution simply because it requested additional information, or that her "only previous contact" with Huntington was in conjunction with her money market account. ASF Exceptions at 4; WII Exceptions at 3 n.1. As Ms. Davis testified, no loan was seriously pursued with that institution due to Ms. Davis' past dissatisfaction with that institution. Davis Opposition, Attachment 2 at TR 42. Contrary to ORA's claim, no loan was "rejected." Cf. ORA Exceptions at ¶ 25.

[4] This figure was listed as $300,000 in Davis' March 9, 1992 amendment which was filed as a matter of right under the rules. The letter was in actuality in the amount of $350,000. See Davis Opposition at Attachment 2. Insofar as Davis filed an amendment as a matter of right to increase her available funding, under Scioto Broadcasters, 6 FCC Rcd 1893 (1991), the revised funding proposal would be the relevant funding to examine.

4. The bottom-line question that is pertinent with regard to a request for the designation of a financial issue is -- does the person or institution on which the applicant is relying have a "present firm intention" to provide the necessary funds. As the Review Board has noted, it often is difficult to ascertain whether such a "firm intention" exists based simply upon the review of bank letters, and thus oftentimes it is necessary for the Commission to determine whether it can infer that a letter conveys "reasonable assurance" only after review of the quality and length of the past business dealings of the parties or a review of the information provided to the person or institution. Scioto Broadcasters, 5 FCC Rcd 5158 (Rev. Bd. 1990).

5. Here, no "inference" based simply upon review of a bank letter or facts adduced in discovery is necessary. In a Declaration supplied by Huntington Bank, which was filed with the Commission (which the parties do not quote *or even reference* in their Exceptions), Mr. Frasier, the author of the letter confirmed that assurances do indeed exist for providing funding in this case. As Mr. Frasier stated:

> I am an "Executive Officer" of Huntington....For more than twenty-five years I have held management and executive positions in the banking industry. During that time I have made hundreds of promises, representations and commitments on behalf of my bank employer. I have never failed to carry out such commitments.
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> * * * *
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> I was first approached in December, 1991 by Shellee Davis concerning the application she was intending to submit for former Station WBBY(FM) in Westerville, and the availability of funding from Huntington Bank to finance that project. Ms. Davis and her husband, Reginald Davis, have banked with this institution for a number of years. I personally am well acquainted with Ms. Davis' finances, the success of her past business and her track record in running a successful business, and her standing and reputation in the community. I also am familiar generally with what had been stature and stability of Station WBBY in the Columbus community during the period it was operating. As I indicated in the letter that I wrote to Ms. Davis, this institution has been anxious to provide financing to Ms. Davis for any of her personal and business endeavors. The Davis proposal was all the more interesting and attractive in light of the recent history of a prior operator having successfully operated in the same facility, on the same frequency and in much the same market.
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> In order to verify the ability of Huntington Bank to provide the funding that was being requested, at the time of her request I requested that Ms. Davis provide information to me concerning the level of financing she would need and information concerning her current finances in the form of a current balance sheet. That information all was provided. In addition, Ms. Davis and I discussed the project and some of her plans for the station. As a Senior Officer with Huntington, I am very familiar with the institution's lending criteria. Moreover, Ms. Davis' proposal and financial information has been reviewed with a seasoned loan officer. Based upon that evaluation, it was the determination at the time that inquiry was made, and remains the understanding of the Huntington today, that funding can and will be provided in accordance with the level of financing requested in the December 27, 1991 letter, and in fact can be provided at the level of financing stated in the March 9, 1992 letter..... This decision was made with the understanding that Ms.

> Davis intends, if possible, to lease a large portion of the equipment for the station (which may reduce the amount of loan that will be needed), and that the FCC license may not permissibly be subject to a security interest by this institution. Ms. Davis has kept me informed of the progress of the application, and as I repeatedly have assured her since her request was approved, the anticipated availability of funding has remained in place.
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> * * * *
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> The attached letters correctly reflect intentions of this institution to provide funding to Ms. Davis under the conditions stated therein. This institution has not in the past, nor will in the future, issue any documents which are false, or which fail to accurately reflect the intentions of this institution.

Davis Opposition at Attachment 1.[5]

6. Therefore, the parties' claims that the "Huntington Bank had virtually no knowledge of Davis' financial qualifications, her past business record, credit history, or business plans" (ASF Exceptions at 5) and that the certification was obtained "from a banker...who knew nothing about the basic facts needed by a bank..." (WII Exceptions at 2), and their simultaneously speculation that the letter merely was an "accommodation letter," was proven below to be wholly incorrect. Under traditional Commission precedent, in order to determine that an applicant has "reasonable assurance" of "committed sources of funds" from a lending institution, the Review Board stated that the factors that are to be considered are as follows:

> Whether (1) the bank has a long and established relationship with the borrower sufficient to infer that the lender is thoroughly familiar with the borrower's assets, credit history, current business plan, and similar data. See Multi-State Communications, Inc., v. FCC, 590 F.2d 1117 (D.C. Cir. 1978); or, (2) the prospective borrower has provided the bank with such data, and the bank is sufficiently satisfied with this financial information (e.g., collateral guarantees, see Chapman Radio and Television Co., 70 FCC 2d 2063, 2072 (1979) that, ceteris paribus, a loan in the stated amount would be forthcoming, and that the borrower is fully familiar with, and accepts the terms and conditions of the proposed loan (e.g., payment period, interest rate, collateral requirements, and other basic terms).

Scioto Broadcasters, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990). As the Review Board has stated even more recently:

> In the absence of ... a long-term relationship, a borrower need establish that it provided the bank with financial data upon which the bank could review the loan request, that the bank did so, and the bank is satisfied with the data.

A.P. Walter, Jr., 6 FCC Rcd 875, 877 (Rev. Bd. 1991).

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[5] Assurances of funding from Huntington Bank have been accepted in the past. See Scioto Broadcasters, 5 FCC Rcd 5158 (Rev. Bd. 1990).

7. As seen, Davis passed both of these tests, insofar as she has an established long-term banking relationship with the lending institution, has supplied that institution with information sufficient for it to review, and the institution has tentatively approved the funding request -- Davis' loan request already has passed initial muster with the bank, and her background, her finances, and the intended purpose of the loan satisfy the Huntington Bank's credit criteria, and the parties' argument continue to fail to take the Huntington Bank's sworn Declaration affirming those assurances into account. Thus, the Presiding Judge correctly denied the parties' request for the addition of an issue. What the parties are attempting to do is second guess the lending institution's decision -- a matter beyond the jurisdiction of the Commission but wholly within the confines of the private judgement of Huntington Bank.[6] Davis is an established businessperson in the Columbus-area business community. She has received a valid and adequate assurance of the availability of funds to construct and operate her proposed facility. In denying a request in another proceeding to add a financial issue (and affirming the "reasonable assurance" standard), the Commission recently stated that no financial issue is warranted where:

> the bank letter reflects sufficient dialogue between [the applicant] and the bank to establish that it has a present, firm intention to make the proposed loan, future conditions permitting. Thus, in the absence of specific evidence of the bank's unfamiliarity with (and failure to review) [the applicant's] financial qualifications, the cases cited by petitioners do not support the addition of a financial issue against [the applicant].

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[6] For example, the parties complain that Davis will not possess assets which can be subject to a security interest by Huntington. WII Exceptions at 5 and 8. That is inaccurate. In the event no Mid-Ohio equipment is provided to Davis, she will purchase and own nearly $125,000 worth of equipment and will be initially borrowing $240,000, all of which could be amply collateralized by the value of the equipment, the station's future accounts receivable, and by her personal assets -- in the event the lease equipment remains available at grant she will purchase and own over $60,000 of equipment but would need initially to borrow only approximately $150,000, which even more easily also could easily be collateralized by the value of the equipment, the future accounts receivable, and by her assets. Cf. WII Exceptions at 5. Finally, WII's claim that the loan "exceeds her entire net worth" (WII Exceptions at 7), is incorrect. As established at the deposition, the balance sheet does not include the value of her 100% ownership of Britt Business Systems. As information submitted in Ms. Davis' Hearing Exhibits shows, Britt Business Systems is an established business which has consistently been ranked as one of the top Xerox dealerships nationally, and which will be sold in the event Ms. Davis prevails in this proceeding. Davis Exh. 1. The business has no debts (other than debts owed personally to Ms. Davis). TR 382, 388. As noted at the hearing, in 1992 Britt had an annual net positive cash flow of approximately $80,000. TR 425. Using even a typical multiplier of four-to-five times cash-flow which has been used for the sale of similar businesses, it can be estimated that the value of her business is in the neighborhood of $300,000 - $400,000.

Thus, there is no basis for the parties to second-guess the current judgement of the Huntington Bank.

Liberty Productions, a Limited Partnership, 8 FCC Rcd 4264, 4265 ¶ 6 (1993). Here, there is specific evidence both that financial information was supplied, and that it has been reviewed. Similarly, in Annette B. Godwin, 8 FCC Rcd 4098 (Rev. Bd. 1993), the Board found that no issue was warranted where, as here, an applicant "supplied [the bank] with the ordinary loan request documentation and data; specific terms were exchanged; and the bank's vice president later expressly reaffirmed its positive intent when the bank letter was questioned." Id. at 4101 ¶ 8. The Review Board has stated that the Commission will not second-guess the willingness of a financial institution to make a loan. Harrison County Broadcasting Co., 6 FCC Rcd 5819, 5821 ¶ 14 (Rev. Bd. 1991). Based upon all of this binding precedent, no issue was warranted in this case, as well.[7]

8. Finally, the cases cited by the parties are inapposite. Unlike Praise Broadcasting Network,

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[7] The parties' recitation of other facts also are flawed, and consequently do not dictate the addition of a financial issue in this proceeding against Davis. (1) There is no evidence in the record that Mr. Frasier is a social "friend" of Davis' as claimed by WII -- in fact, deposition testimony reflects the exact opposite. WII Motion, Att. B, TR 44. Cf. WII Exceptions at 2. (2) WII's claim that bank's letter "made no sense in the context of Davis' actual business plan" (WII Exceptions at 3) is unexplained and unsupported. (3) WII's claims that Davis "provided [Huntington Bank] no budget or business plan, never discussed the projected profitability of her proposed venture or the monetary value of the proposed station" (WII Exceptions at 3-4) all are unsupported by the transcript citations contained in WII's original Motion, and also fail to account for the fact that Davis and Mr. Frasier had a lengthy conversation concerning her loan request, the past history of the station, and her plans to apply for the facility. WII Motion, Att. B, TR 49-52. (4) To the extent that Davis never "discussed" the bank's credit criteria or terms of the projected loan, or collateral that may be required with Mr. Frasier (WII Exceptions at 4), that fact is irrelevant in light of the fact that he had determined that Davis satisfied those criteria, and the terms and collateral of the projected loan were reduced to writing as part of the issued bank letter. (5) WII's claim that other than her management that Davis never discussed her staffing plans with Frasier (WII Exceptions at 6) also is incorrect. All the transcript reflects, however, is that while she had no "deep conversation" about the topic, she did discuss with him that she intended to run a station that was staffed properly, with herself managing the station. WII Motion, Att. B, TR 52. (6) WII's assertion at footnote 4 of its Exceptions, whereby it claims that Huntington's collateral requirements make no sense because "it is obvious that a station unable to meet its periodic bank payments would not have accounts receivable sufficient to satisfy the entire loan," itself makes no sense. First of all, in this instance, "accounts receivable" are not the only collateral being required by Huntington Bank, so they would not independently need to be of a sufficient magnitude to protect the entire loan, alone. Moreover, WII's statement conceptually makes no sense. "Accounts receivable" is uncollected money. In many instances in the broadcast field it is precisely because money has not yet been collected that a station is unable to "meet...periodic bank payments," despite the fact that the station may have hundreds of thousands of dollars of uncollected funds on its books which eventually will in fact be collectable in the future. In such instances, the bank has a first lien on those uncollected funds, which serves to protect and serve as collateral for any loans that have been provided. When the funds are paid by or collected from the station's advertisers, they then go directly to the bank to pay off the loan.

In any event, all of these considerations were and remain private business determination of the Huntington Bank.

8 FCC Rcd 5457 (Rev. Bd. 1993), cited by ASF (ASF Exceptions at 6), where a financial issue was warranted because the financing was proposed to be provided from a financial institution through a limited partner, yet (1) the financial institution had no apparent knowledge of the individual to which the funds would be ultimately provided, (2) the financial institution expressed only a willingness "to consider" extending a loan, (3) it was unclear whether the bank ever considered the borrower's qualifications, (4) it was unclear whether a required outside "guarantor" would be available, and (5) in any event, the bank issued no statement affirming its continued present intention to actual extend a loan, Davis herself is borrowing the funds, Mr. Frasier is familiar with Ms. Davis, no outside "guarantor" is being required, and Mr. Frasier's declaration affirms that Davis' qualifications were reviewed not only by him, but also another seasoned officer in the loan department. Similarly, unlike Shawn Phalen, 5 FCC Rcd 53 (Rev. Bd. 1990) (where information from the applicant's designated financial institution established that the prospective borrower had provided no financial information to the bank sufficient to allow it to make even a tentative commitment), and Isis Broadcast Group, 7 FCC Rcd 5125, 5129 (Rev. Bd. 1992), where the bank's representative "said the bank has not received sufficient information to make any decision about a loan" (id. at 5129 ¶ 16), in contrast here, Huntington Bank has specifically affirmed that it had received information adequate to make a tentative commitment, and that the information has been reviewed. Thus, the depth of Huntington Bank's familiarity with Ms. Davis and her project is totally unlike that found in the cases cited by the other parties in this proceeding.

9. In short, the parties' allegations are the result of (incorrect) speculation, and selective presentation and misreading of the record. Davis had two choices of financial institutions from which to obtain a loan -- Davis chose to pursue the one which had already been aggressively seeking her business. Ironically, the parties are on one hand parading the value of Davis' existing asset (her existing business) for purposes of attacking the credibility of her integration proposal, yet on the other hand is claiming an inability on her part to obtain a loan from a local financial institution with which she has banked for years, which is familiar with her credit history, and which has been anxious to do business with her in the past. This two-faced argument should be rejected.

10. WII's second argument, that Davis has not yet affirmatively committed herself to accepting

the terms proposed by Huntington Bank, also was proven to be incorrect. WII mischaracterized Davis' testimony.[8] She never has stated that the bank's proposed terms are affirmatively unacceptable -- all she has stated is that she has not yet decided whether she will need or agree to secure the loan with "personal property" (such as her home in particular), or whether she will instead make available alternative property to secure her personal commitment. Davis Opposition, Att. 2 at TR 59, Att. 3. In contrast, she has never stated that she is unwilling to provide an appropriate "secured personal commitment" (the precise term contained in the Hunting Bank letter of reasonable assurance) required in the bank's letter, and as Ms. Davis clarified in her Opposition, Att. 3, the terms in the Huntington Bank letter are indeed acceptable. Thus, despite the fact that she has not yet decided whether she will agree to secure the loan with "personal property" such as her home in particular, she is willing to accept the precise terms contained in the letter to the extent market conditions may justify or require it[9], and is willing to provide the required "secured personal commitment" in order to obtain the loan. Therefore, WII's mischaracterization of Ms. Davis' deposition testimony also does not form a basis for the addition of a financial issue in this proceeding.

11. Davis is financially qualified. The Presiding Judge's ruling denying the requested financial issue should be affirmed.

Davis Correctly Was Awarded 100% Integration Credit

12. To the extent "integration credit" continues even to remain even relevant in this proceeding,[10] Davis remains entitled to 100% integration credit. As a general matter, integration credit

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[8] A great deal of the interpretive confusion WII attempted to weave resulted from the fact that Ms. Davis was not responding to a specific question when delivering the testimony on which WII relies. WII Motion at 5. The question Mr. McCormick asked was "Did you have any discussion with Mr. Frasier as to what constituted a secured personal commitment?" After responding to the question, Ms. Davis provided the opinion "sometimes you have to mortgage your house and all that kind of stuff," that they didn't get into specifics "about that," and that she would be deciding at the time of the loan whether or not it would be necessary for her to secure that "personal property." See Davis Opposition, Att. 2 at TR 58-59.

[9] However, as the Commission has recognized:

> projected expenditures and sources of funds relied upon by applicants in establishing their financial qualifications frequently change and are rarely carried out as planned.

KRPL, Inc., 5 FCC Rcd 2823, 2824 n.1 (1990).

[10] Susan M. Bechtel v. FCC, Case No. 92-1378 (D.C. Cir., Dec. 17, 1993).

is warranted when the applicant sets forth a specific integration credit, the applicant adheres to that proposal, and there is a reasonable assurance that the plan will be carried out. Coast TV, 5 FCC Rcd 2751, 2752 ¶ 8 (1990); Royce International Broadcasting, 5 FCC Rcd 7063 ¶ 7 (1990). Where an applicant presents sworn evidence averring that he or she is the applicant's sole owner and in which he or she pledges to devote 40 hours per week at the station in the role of general manager, that pledge constitutes prima facie evidence that the applicant's integration plan will be carried out in the event the applicant receives a grant. Helen Broadcasters Inc., 7 FCC Rcd 6844, ¶ 3 (1993). In considering whether an applicant has met its burden of proof concerning integration, the entire record is appropriately considered, including testimony on cross-examination. Id. Accordingly, a promise to work at a station as a General Manager "should not be brushed aside unless compelling evidence to the contrary is available." Bisbee Broadcasters, Inc., 48 F.C.C.2d 291, 293 (Rev. Bd. 1974); Broadcast Associates of Colorado, 100 F.C.C.2d 616, 618 ¶ 5 (Rev. Bd. 1985). Integration credit only is to be denied where there is "compelling and specific record evidence establishing that the subject proposal is inherently unreliable." Frank Digesu, Sr., 7 FCC Rcd 837, ¶ 3 (Rev. Bd. 1992). "Mere suspicions" are no basis for disregarding an applicant's integration proposal. Goodlettsville Broadcasting Co., 8 FCC Rcd 57, 61 ¶ 17 (Rev. Bd. 1992); Cleveland Television Corp. v. FCC, 732 F.2d 962, 969 (D.C. Cir. 1984).

13. If an applicant proposes to retain an outside business interest, the very existence of [the] other interests renders questionable the applicant's integration commitments in the absence of an additional showing how those interests will be accommodated. Blancett Broadcasting Co., 17 F.C.C.2d 227 (Rev. Bd. 1969). Where, however, an applicant submits an unequivocal pledge to wholly terminate a practice or any other business interest, the Commission will award 100% quantitative full integration credit. Renee Marie Kramer, 5 FCC Rcd 563 (Rev. Bd. 1990).[11] Here, Shellee Davis has proposed to work full-time as General Manager of her proposed station, and to effectuate that pledge, she has indeed committed that she will terminate all other paid employment and sell her existing business in order to effectuate her

[11] Board Member Blumenthal has espoused the view that applicants be absolutely required to "forego altogether a significant business interest...or to demonstrate that he/she has been essentially a passive owner in the enterprise." Kevin Potter, 6 FCC Rcd 7278, 7282 (Rev. Bd. 1991) (Statement of Board Member Norman B. Blumenthal Concurring Dubitante).

integration commitment. Davis Exh. 1 at 1. Even in the event she could not sell Britt for an acceptable price, she would cease operating Britt in the event she is awarded the permit in this proceeding. TR 420. Thus, Davis is entitled to 100% quantitative integration credit.

Sale of Britt Business Systems

14. ORA argues, in part, that Davis is not entitled to quantitative integration credit because she has "has made no effort to sell Britt." ORA Exceptions ¶ 17. That claim is false, misleading, and irrelevant. As the record shows, Ms. Davis already has transferred a portion of her company that previously was owned by her but was operated by her brother-in-law, Benjamin Davis. TR 431. Moreover, she has been collecting names of interested buyers, made inquiries concerning the proper steps to be made to transfer a business such as hers, begun reviewing publications where businesses such as hers are marketed, and has begun to arrange for a formal appraisal of her business to be conducted. TR 383-84. This is in addition to her ongoing efforts to promote the growth of the business, to ensure that it will be as marketable as possible. TR 384, 391. In fact, she intentionally has developed Britt in such a way so that it can "stand on its own two feet" without her continued involvement. TR 386.

15. Moreover, insofar as Davis has pledged to terminate all paid employment and will sell her existing business in order to effectuate her integration commitment, ORA's claim is irrelevant. Davis Exh. 1 at 1. This pledge is clear and unequivocal. As Board Member Blumenthal recently noted:

> the Board has accepted an unequivocal pledge to wholly terminate a practice, see, e.g., Renee Marie Kramer, 5 FCC Rcd 563 (Rev. Bd. 1990), review denied, 5 FCC Rcd 5349 (1990), aff'd per judgement sub nom. Joyner v. FCC, 946 F.2d 1565 (1991) (Table), just as we regularly credit other pledges to wholly divest of any other business interest, absent some anticipatory showing to the contrary. Pledges to terminate completely a business interest are, relatively speaking, much easier to police. It is where an applicant proposes to retain, but reduce oversight of, a significant outside interest that precedent bridles.

Linda U. Kulisky, 8 FCC Rcd 6235, 6240 n.4 (Rev. Bd. 1993) (Statement of Board Member Blumenthal).

16. The fact that she has not "already" sold (or, in ORA's view, not undertaken sufficient "efforts" to sell) her business is largely irrelevant. The pledge is one that is designed to be effectuated in the future, and as the Commission has stated, "we do not expect applicants to forsake their livelihoods while their applications are pending." Cuban American, Ltd., 2 FCC Rcd 3264, 3269 ¶ 22 (Rev. Bd.

1987).[12] Davis, nor any other applicant, is forced under Commission precedent to immediately abandon sources of existing income prior to a final Order in order to be entitled to quantitative integration credit (Cuban American Ltd., 2 FCC Rcd 3264, 3269 ¶ 22 (Rev. Bd. 1987)), since no applicant ever has a guarantee that its particular application will be granted.[13]

17. For all these reasons, ORA's argument should be rejected.

Marketability

18. The applicants also argue, essentially, that Davis' business is unmarketable, and she will be "unable" to sell her business in order to effectuate her integration commitment. The major flaw in the parties' arguments lie in the fact that, as the Presiding Judge noted, whether a business is "marketable" lies predominantly in the question of what price the asset will be offered. TR 387. They fail to note that as Davis testified both in depositions and at the hearing, in the event she is awarded the permit in this proceeding, in the event Ms. Davis could not sell Britt for an acceptable price she would cease operating Britt. TR 420. Thus, in all events, there will be no impediment to Davis' ability to effectuate her full-

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[12] Accord, Anchor Broadcasting Limited Partnership, 6 FCC Rcd 721, 723 ¶ 13 (1991) (testimony concerning applicant's current residence not relevant to applicant's pledge of future residence in the community of license). See also, Coast TV, 4 FCC Rcd 1786, ¶ 3 (1989) ("it is unrealistic for this Commission to expect the status of the principals of an applicant to remain static during often lengthy proceedings"). Integration credit has properly been awarded to applicants who nevertheless sign new contractual employment commitments during the pendency of Commission applications (Cuban American, Ltd., supra.), begin new careers (Poughkeepsie Broadcasting, Ltd., 5 FCC Rcd 3374, 3380 (Rev. Bd. 1990)), or even commence new educational endeavors (CR Broadcasting, Inc., 5 FCC Rcd 5348 (Rev. Bd. 1990)), as long as their activities or commitments can be fulfilled prior to the expiration of the permit's construction period or are terminable flexibly or at will.

[13] For this reason, just as the Commission does not require applicants' principals to go through the time and expense to move to a community prior to grant in order to receive credit for future residency (HS Communications, Inc., 7 FCC Rcd 6448, 6457 (Rev. Bd. 1992) (mere promise to relocate ordinarily sufficient; integration credit awarded although no plans to move have yet been made)), to purchase a transmitter site prior to grant in order to specify a transmitter site (Elijah Broadcasting Corp., 5 FCC Rcd 5350 (1990) (it would not serve the public interest to add to the costs and risk that applicants incur by requiring them to secure binding commitments for the use of transmitter sites)), or to even go through the time and expense to submit a formal loan application prior to grant in order to validly claim that they are "financially qualified" (A.P. Walter, Jr., 6 FCC Rcd 875, 879 n.5 (Rev. Bd. 1991); Las Vegas Valley Broadcasting Co., 589 F.2d 594, 599 (D.C. Cir. 1978) (since license application may not succeed "for years, or at all," Commission requires only that applicants establish a "reasonable assurance" of financing)), so, too, the Commission has never required applicants to go through the time and expense to begin active marketing of their existing businesses based upon a hoped-for, anticipated, but nevertheless speculative, grant from the Commission.

time integration commitment.[14]

19. Moreover, the claimed reasons for the alleged "unmarketability" of Davis' business are without basis. They claim, for example, that the business is unmarketable because of restrictions contained in its dealership contracts. WII Conclusions at ¶ 17; Ringer Exceptions at 6-7; WII Exceptions at 11-12. Pursuant to Commission precedent, an integration plan is sufficient as long as there is a "reasonable likelihood" that the applicant will be able to carry out its integration duties (Las Americas Broadcasting Co., 1 FCC Rcd 786, 794, ¶ 37 (Rev. Bd. 1986)). That "likelihood" clearly exists here. The vast majority (80-85%) of Britt's business is through the sale of Xerox products. TR 430. While the Xerox dealership agreement requires prior written consent for assignment, the contract specifically provides that consent "shall not be unreasonably withheld." Ringer Exh. 6 at 5.[15] Significantly, the competing applicants have submitted no testimony showing that Xerox is unlikely to abide by the terms of contract by withholding consent. Therefore, the fact that some "prior consent" of Xerox is required prior to the contract's assignment is irrelevant.[16] [17]

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[14] Stated otherwise, unlike the situation found apparently in Richard Bott II, 8 FCC Rcd 4074 (1993), where it developed that an applicant's integration pledge was contingent (there, on the practicality of introducing a certain specific format on his proposed station (id. at 4075-76 ¶¶ 9-10)), Davis proposal is entirely unequivocal.

[15] Thus, for example, despite the fact that broadcast stations are not immediately assignable (i.e., insofar as they require prior Commission consent prior to assignment), the Commission routinely credits applicants' bare assertion that they will divest themselves of conflicting broadcast licenses, despite the fact that the interests are not "freely assignable." No showing of "marketability" is required. See Barry Skidelsky, 7 FCC Rcd 1, 8 ¶¶ 36-37 (Rev. Bd. 1992) (rejects contention that diversification demerit is warranted against competing applicant simply because it is "unclear whether [the applicant] can sell the stations").

[16] As to the remainder of her business, only the 5% of her business governed by the Panasonic contract would not apparently be assignable. TR 430; Ringer Exh. 5 at 6-7. In contrast, 10-15% is not restricted by any contractual limitations. TR 430.

[17] Washoe Shoshone Broadcasting, Inc., 3 FCC Rcd 3948 (Rev. Bd. 1988), and Swan Broadcasting Limited, 6 FCC Rcd 17 (Rev. Bd. 1990) (cited in WII Exceptions at 12), are inapposite and are fully distinguishable. Washoe Shoshone involved a situation where an applicant's principal intended to retain his McDonald's franchised business, but a contractual provision obligated the principal to devote his full-time attention to that business. Integration credit rightfully was denied. Washoe Shoshone, 3 FCC Rcd at 3952 ¶ 15. Similarly, Swan Broadcasting also involved an applicant that intended to retain an existing business, but the applicant was contractually obligated (under the terms of a program administered by the Small Business Association) to continue to work at the facility full-time as President and/or CEO of the business. There, too, integration credit was denied. Id. at 18 ¶ 6. What WII continues to fail to note, however, is that the full Commission reversed and remanded that decision, and is allowing the applicant to explain how it can reconcile

20. Therefore, as the record demonstrates, there exists now, and has always existed, far more than simply a "reasonable" likelihood or assurance that her business is capable legally of being transferred to a new owner, as represented in this proceeding, and even if it is not, the business will cease. There exists no conflict, potential or possible, to Davis' integration proposal. The current existence of Davis' business poses no impediment to her ability to provide exclusive attention to the Westerville facility in the future, or to her entitlement to an award of 100% quantitative integration credit in this proceeding.[18]

Value of Business

21. As to the parties' claims that it is unlikely that the Britt will be attractive or profitable as a business absent Ms. Davis' continued involvement (see, e.g., Ringer Exceptions at 5-6), those claims are totally speculative. While it is true that Ms. Davis is the founder of Britt and established Britt as an on-going business entity (Davis Exh. 1 at 2), the parties have submitted no evidence (i.e., expert testimony) establishing in any way that Britt is "worthless" without her continued participation, that others with the same care and dedication to the business cannot also enable Britt not only to survive but to grow, or that existing clients will abandon Britt when it is sold. In fact, the record suggests otherwise. Ms. Davis' sales efforts currently involve predominantly taking orders on existing house accounts (which are accounts who have placed previous orders and who purchase additional equipment). TR 378. Thus, new accounts already are being acquired by employees of Britt other than Ms. Davis. In fact, Britt's former Cleveland office was run, for years, without any involvement by her -- the office was run by her brother-in-law, Benjamin Davis. The parties submitted no evidence at the hearing that the Columbus office cannot also

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its SBA obligations with its FCC integration pledge. Swan Broadcasting, Ltd., 8 FCC Rcd 4208, 4209 ¶ 8 (1993).

Here, in any event, unlike Swan or Washoe Shoshone, Ms. Davis has pledged that she will not retain her existing business, and the fact of the matter is that no provision obligates her to continue to work for Britt. Unlike the situation found in those two cases, Ms. Davis could quit Britt immediately (and never spend another moment's time or attention to Britt) and not be in violation any contractual provision entered into with any other party.

[18] Ringer also suggests that since Davis' purported "key employees" will leave with her, this also will affect the marketability of the business. Ringer Exceptions at 6 n.2. As the record shows, however, Ms. Kindall Carmichael is simply an office manager, and Mr. Jim Johnson is a sales representative. TR 382. He is not, however, even Britt's top salesperson. TR 383. His leaving will not necessarily affect the value of Britt since more salespersons already are being hired. TR 429.

be sold, and subsequently operated, in a similar manner.

22. ORA also claims that "Davis attributes the success of Britt to her personal involvement." ORA Exceptions ¶ 16. However, as she noted, the success of the company has not been based due solely on her sales and personal contacts. TR 377. As she testified, while originally her business was based predominantly on her personal contacts with her clients, over the course of time she has hired additional employees who also represent the company well. TR 380. While Britt currently has as clients such nationally-known clients as Anheuser-Busch, American Electric Power Company, the Columbus Public Schools, Ohio State University, the State of Ohio, the Columbia Bar Association, and the law firm of Baker & Hostetler (TR 418-19), no evidence has been presented that these clients would not remain with Britt even in the event Britt is sold. As Ms. Davis testified:

> The value of Britt Business Systems would lie in such things as the inventory, accounts receivables, any other assets. Also, the customer base, the full service maintenance that...last over time, the good...name of the company, and also the potential ongoing business.

TR 428-29. Thus, based on her knowledge of the office equipment industry, what Britt has to offer, its standing in the community, and its standing as a Xerox dealer, Ms. Davis opined that Britt is a "very marketable company." TR 386. Neither the existence of these factors nor the validity of her opinion that her business is currently very marketable has in any way been challenged through the submission of evidence or conflicting testimony, competent or otherwise. Therefore, the parties' assertions to the contrary constitute mere speculation, and must be rejected.

Credibility of Divestiture Pledge

23. Finally, the parties claim that it is "unbelievable" that Davis would abandon Britt in light of the success she achieved with Britt. ASF Exceptions at 12-13; Ringer Exceptions at 6; ORA Exceptions ¶ 21; WII Exceptions at 12. Again, the parties are advancing untrue facts to the Board, and are engaging in unwarranted (and untrue) speculation.

24. First and foremost, Ms. Davis' "income" from Britt IS NOT "$106,000" as claimed by Ringer (Ringer Exceptions ¶ 6), her "compensation and salary" from Britt IS NOT "$105,000" as claimed by ORA (ORA Exceptions ¶ 16), and her income was NOT "in excess of $100,000 in 1992" and her proposed salary at her proposed station WILL NOT be "less than one-third of her present income" as

claimed by ASF. ASF Exceptions at 8, 12. The record shows that Ms. Davis' current salary and compensation is approximately $26,000. TR 421. Britt Business Systems' profits, in contrast, in 1992, were approximately $80,000. TR 425. While, as the Presiding Judge pointed out, that profit may "eventually" accrue to Ms. Davis since she's the 100 percent owner (TR 424), when or whether it in fact will ever accrue to Davis is speculative.[19]

25. Thus, to the extent Ms. Davis is anticipating that she will be paid $30,000 initially as General Manager of her proposed facility (TR 387-88), her salary in conjunction with this facility will remain essentially unchanged. As the Commission stated in Barry Skidelsky, 7 FCC Rcd 1, 9 ¶ 47 (1992), the Commission does not view with skepticism applicants' pledges to leaving existing businesses (even specialized businesses such as legal practices).[20] The Commission consistently has rejected the argument that its was "unbelievable" that an applicant would turn over his sole source of income in the event of a

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[19] It must be emphasized that Britt is a corporation, not a "d/b/a/." The compensation paid to Davis is for her personal use. The monies retained by Britt are retained for corporate uses. Corporate monies are not co-mingled with Ms. Davis' personal funds. The retained earnings will be passed on to Davis only when the business is liquidated or sold -- in the meantime they are retained and/or reinvested in the company to purchase additional assets (e.g. equipment) for the business and to offset losses accrued from past years. Cf. TR 382 (Ms. Davis has made loans to the company, some of which are still outstanding). Whether retained profits will exist in the future when the business is liquidated or sold is unknown. Until that time, however, Britt's profits do not yet constitute "compensation" to Davis from Britt, either direct or indirect.

[20] As the Review Board stated in response to a similar argument in Renee Marie Kramer, 5 FCC Rcd 563 (Rev. Bd. 1990):

> [An applicant] also maintains that no "integration" credit should accrue its close competitor, because it doubts that Arthenia Joyner, a Tampa probate attorney, will yield sufficient hours from her law practice to devote full time to station management. It claims that Ms. Joyner's testimony contains contradictions of her plans for winding-down her practice, and that her failure to have advised current clients of her pending broadcasting proposal to the FCC suggests an inconsistency in her intentions. As [the applicant] itself states in its brief, Joyner has represented unequivocally that she will "retire from her law practice and she will hold no outside employment and...devote at least 40 hours per week to the management of the station." We find not only no legal gravity in [the applicant's] purported skepticism over Joyner's "integration" pledge, we find no logical basis in its bald suppositions. Just why is it unbelievable that an attorney would exchange a probate practice for ownership and management of a television station [the applicant] does not ever say, but we take note that any number of attorneys (including communications specialists) have migrated from the field of law to a pursuit in broadcasting. [The applicant's] contentions here are not only wholly conjuctual, but idiosyncratic to a fault (if not downright irrational).

Id. at 565 ¶ 12. The parties' contentions in this case are no less conjectural.

grant.[21] The Commission is not a guarantor of financial success. Triangle Publications, Inc., 29 F.C.C. 315, 318 (1960). So, too, is it not in the business of protecting applicants from what others believe are unwise business decisions. Two other applicants (Ringer and WII) are proposing to divest themselves of substantial businesses in the event their applications are granted, and all four competing applicants are investing considerable time, effort, and financial resources in the belief that operations on the frequency in controversy in this proceeding will produce a viable business that will serve the public interest. Davis' belief in the viability of the frequency should be no more viewed with skepticism than that of any other applicant, and the parties' protests to the contrary should be rejected.[22]

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[21] Lynn Broadcasting, 7 FCC Rcd 8563, 8569 ¶¶ 27, 30 (Rev. Bd. 1992); Linda U. Kulisky, 8 FCC Rcd 6235, 6238 ¶ 14 (Rev. Bd. 1993); Warmac Communications, Inc., 103 F.C.C.2d 1218, 1220 ¶ 3 (Rev. Bd. 1985), (Review Board rejects as speculative, absent submission of rebuttal evidence or effective cross-examination, claim that it is unlikely that competing applicant will leave her present position as nurse anesthetist that she has held for 30 years). See also, Perry Smith, 103 F.C.C.2d 1078, 1081 ¶ 4 (Rev. Bd. 1985) ("we will not infer lack of a viable integration proposal from the mere existence (and growth) of pre-license business activity"). As the Review Board specifically stated in Central Texas Broadcasting Co., 90 F.C.C.2d 583 (Rev. Bd. 1978):

> Where, as here, an applicant sets forth in some detail his integration proposal and specifically allocates his time so as to accommodate his outside interests in order to effectuate his proposal, absent persuasive proof, it is unwise to look behind those representations and speculate that the applicant will deceive the Commission by in fact devoting himself to another field because of its pecuniary importance to him. Such a judgement can only be reached by engaging in a subjective analysis of the inherent importance of one endeavor as opposed to another in the applicant's (and our own) scheme of values.

Id. at 596. See also, Annette B. Godwin, 8 FCC Rcd at 4098-99 (Board rejects claim that it was "inherently incredible" that applicant would not take a salary at her proposed station).

[22] Moreover, the parties' objections are premised on the apparent belief that size of income is the be-all and end-all of career decisions, arguing that what they believe is Davis' current compensation belies her divestiture claims. That, in and of itself, is contrary to the record developed in this proceeding. As the record shows, through nearly every one of Ms. Davis' outside activities as well as the way she conducts her business, first and foremost Ms. Davis strives on an ongoing basis to serve the community. As she stated, the reason she applied for the frequency in this proceeding was because:

> it is very interwoven to the community. With... Britt, I have used Britt as a vehicle to do different things within the community, to the best of Britt's ability financially and time...and also to the best of my ability. And, with the radio station being such a community focused enterprise, I thought that this would be a way that I could get even more creative and more involved in the community.
>
> Office equipment is okay. I mean, I have been able to be somewhat creative with selling office equipment based on...my marketing ability. I think my background in human relations in human relations, plus...dealing with customers, being involved in the community, being able to develop sales reps...would build a healthy company.

26. Finally, all of the parties' fear that Davis will somehow "ignore" her specific divestiture pledge, or has engaged in misrepresentations or submitted evasive testimony to the Commission, also should be rejected.

27. As to the claims that she may not adhere to her integration pledge, aside from being speculative, is contrary to her specific testimony. The Presiding Judge was in a unique position to assess Davis' demeanor and credibility. To simply "reject" Davis pledge as dishonestly made would of course require either a finding that she engaged in a direct misrepresentation (for which no evidence has been presented), or else would require a conclusion that her "demeanor" made it evident that her proposal is not being advanced in good faith. The Presiding Judge specifically asked Ms. Davis whether she would sell Britt before operating the station. TR 385. Davis agreed, stating "[she] would put it up for sale and hopefully someone will buy it as soon as possible." TR 385. As a test of her intentions, the Presiding Judge himself asked Ms. Davis whether she intends to operate both businesses simultaneously. TR 400. She responded that she would not and could not operate both businesses simultaneously. TR 400. In fact, Davis further clarified the record later in her testimony by noting that in the event she could not sell Britt for an acceptable price, she would cease operating Britt. TR 420.

28. The Presiding Judge credited this testimony, and appropriately awarded Davis 100% quantitative integration credit. It is well established law that the Review Board is generally enjoined to defer to the credibility findings of an ALJ, and will do so where there is support in the record. TeleStar, Inc., 2 FCC Rcd 5, 12-13 (Rev. Bd. 1987); WEBR v. FCC, 420 F.2d 158, 162 (1969). Moreover, in the event Davis deviates from her integration pledge, she will be required to report that fact to the Commission, and the Commission is now taking appropriate enforcement action in cases where it appears that such deviations evidence that a misrepresentation to the Commission has occurred. Proposals to

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* * *

[W]hat I really am interested in more than anything...is being able to reach out more to the community and getting the community more involved, bringing more to them. And I really...feel, whether it's intuition or not, I really feel that I can do that.

TR 392-93. In short, Davis' primary intention is to serve the needs and interests of the community, whether it is through her continued relationship with Britt, or at her proposed radio facility. The monetary aspect is secondary.

Reform the Commission's Comparative Hearing Process to Expedite to Resolution of Cases, 6 FCC Rcd 157, 160 ¶ 22 (1990); Richard P. Bott, 8 FCC Rcd 4074, 4076 ¶ 10 (1993).

29. Ringer also claims that Davis' alleged "lack of candor" with respect to her testimony concerning the amount of income she receives from Britt Business System on an annual basis and the role her brother-in-law held in Britt in the past also impacts the credibility of her integration proposal. Ringer Exceptions ¶ 6.[23]

30. Davis did not engage in a misrepresentation or lack of candor with respect to either of these matters. With respect to her salary, as her testimony shows, when Davis was questioned about her "total salary and dividends," she accurately testified that her annual salary and bonuses from Britt Business System in 1992 totalled approximately $25,000. TR 421. That response was direct, immediate, and accurate. The interrogation, however became more complex when questioning turned to an inquiry concerning broader matters, such as the "total compensation" "[she] receives" from Britt Business Systems (which is approximately $26,300 (TR 421-22)), which then eventually turned to and evolved into questions concerning precisely what amount of profit Britt Business Systems enjoys from its operations each year. TR 425-26. Although Ms. Davis expressed confusion at some points during the questioning,[24] her confusion clearly did not reflect any sort of "inability" on the part of Davis has to be completely forthright with the Commission. Cf. Ringer Exceptions ¶ 8. Significantly, Ringer cannot point to even one response which was inaccurate. In each case Davis clearly answered the precise question that was being asked, to the best of her ability.[25] Thus, there was no misrepresentation. Similarly, she correctly and accurately

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[23] In essence, Ringer is requesting application of the maxim "*Falsus in uno, falsus in omnibus* (i.e., he who speaks falsely on one point will speak falsely on all). The Commission has rejected this maxim. Dorothy Schulze, 7 FCC Rcd 3790, 3793 ¶ 13 (Rev. Bd. 1992). Generalized claims of "lack of candor" on collateral matters do not undermine integration credit unless they factually undercut the applicant's ability to effectuate a pledge to integrate full-time into the management of a station. Richardson Broadcasting Group, 5 FCC Rcd 5285, ¶ 4 (Rev. Bd. 1990).

[24] TR 422 ("I may be misunderstanding this a bit..."); TR 426 ("I, I thought you meant me as the, as being paid 25,000...").

[25] It once again bears reinforcement that Davis' income IS NOT "$106,000." Cf. Ringer Exceptions at 4. Britt Business Systems is a *corporation*, not a "d/b/a" and its profits are not automatically distributed to Ms. Davis. See footnote 19, supra.

testified that prior to their recent separation, Britt Business Systems had a Cleveland office, and her brother-in-law, Benjamin Davis, did indeed run the Cleveland office, but was not a "partner" of Davis' (or Vice President of Britt). The total and complete accuracy of Davis' testimony was conclusively proven when responding to similar charges with respect to a "Motion to Enlarge Issues" filed by ORA. See "Opposition to Motion to Enlarge Issues Against Davis" filed on September 17, 1993.

31. This matter specifically was placed before, considered, and rejected by the Presiding Judge. Therefore, Ringer's claim that "the Presiding Judge gave no consideration to the fact that Ms. Davis gave wavering and evasive testimony on at least two occasions" incredibly fails to account for the fact a request for an issue regarding this very matter specifically was denied. As the Presiding Judge concluded:

> The Trial Judge has gone over Davis Exhibit 1 (Integration and Diversification), Davis Ex. 2 (Auxiliary Power), and all of Ms. Davis' testimony (Tr. 374-445). He can find absolutely no creditable basis for saying she knowingly and unintentionally misrepresented in her hearing exhibit. Nor is there any creditable basis for saying she gave evasive and candorless testimony....
>
> The most that one can glean from Ms. Davis' hearing testimony is that she may have misled a newspaper reporter who was interviewing her back in 1991. This is of no great moment and appears to have been more a product of carelessness than evasiveness.
>
> SO, the "Motion to Enlarge Issues Against Davis" that Ohio Radio Associates filed on September 15, 1993, IS DENIED.

Memorandum Opinion and Order, FCC 93M-614 (Sept. 14, 1993). Significantly, Ringer has not filed exceptions contesting the accuracy of that MO&O.[26] This argument, therefore, should be rejected.

Business Knowledge

32. ORA implies also that Davis is not entitled to quantitative integration credit because of her lack of present knowledge about the radio industry. ORA's proposed findings and conclusions contain a host of inaccuracies and irrelevancies.[27]

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[26] Under Section 1.277(a) of the Rules, an applicant waives "any objection [to the Initial Decision] not saved by exception." 47 C.F.R. § 1.277(a).

[27] For example, ORA claims that "Davis does not actually know how much it would cost to operate a station." ORA Exceptions ¶ 19. There is no testimony to that effect, and in any event, the Commission repeatedly has stated that "lack of broadcast experience is not relevant to the quantitative integration analysis." The Baltimore Radio Show, 4 FCC Rcd 6437, 6438 ¶ 7 (Rev. Bd. 1989). ORA also claims "Davis has never done a market analysis as to a format for her proposed station." ORA Exceptions ¶ 19. ORA does not explain, however, what relevance that fact has under the Standard Comparative Issue, or of what relevance a format decision today would have for a station which may not begin operating for two years (during which time the